

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 1:23-cv-00853-DAE

GREG ABBOTT, in his capacity as
GOVERNOR OF THE STATE OF TEXAS,
and THE STATE OF TEXAS,

Defendants.

**PLAINTIFF UNITED STATES' NOTICE OF SECOND SURVEY
BY THE INTERNATIONAL BOUNDARY AND WATER COMMISSION**

Plaintiff United States hereby notifies the Court of developments related to this litigation.

On September 14, 2023, the International Boundary and Water Commission (IBWC) finalized, and authorized the United States to make public, the results of IBWC's second binational topographical survey of the floating barrier that Defendants deployed in the Rio Grande.

The U.S. Section and the Mexican Section of the IBWC previously conducted a joint survey of the floating barrier on July 27 and 28, 2023. *See* ECF 32. The results of the July survey indicated that the floating barrier crossed the International Boundary line (IBL) between the United States and Mexico, and that a majority of the floating barrier was located within the territory of Mexico. *Id.* at 2. The United States filed a notice informing the Court of the July survey results on August 15, 2023, once the Commissioners of the U.S. Section and Mexican

Section of the IBWC had both concurred in the results and approved their release to the public.

Id. at 1.*

Following the United States' August 14, 2023 notice, Texas and/or its contractors repositioned the floating barrier within the Rio Grande. *See* ECF 39; Aug. 22, 2023 Hr'g Tr. 101-02 (testimony of Loren Flossman confirming that Texas repositioned barrier).

On August 30, 2023, the U.S. Section and Mexican Section of the IBWC conducted a second joint (binational) survey of the floating barrier. Pena Sept. 18 Decl. ¶ 2 (Attachment 1). The purpose of the August survey was to determine the barrier's location with respect to the IBL following Texas's efforts to reposition the barrier. *Id.* at ¶ 3. The results of the August survey became final on September 14, 2023, upon the concurrence of the U.S. Commissioner and the Mexican Commissioner. *Id.* at ¶ 11. The Mexican Commissioner further approved the U.S. Commissioner's request to allow the United States to make public the final survey results. *Id.* ¶ 12.

The August survey establishes that the chain of floating buoys deployed by Defendants is approximately 995 feet long. *Id.* at ¶ 6. Comparing the survey results against the IBL, the results indicate that as of August 30, 2023, the entire floating barrier was located within the United States. *Id.* at ¶ 8; *see also id.* Ex. B (map showing approximate location of barrier in relation to IBL).

* The IBWC has been designated as a public international organization within the meaning of the International Organizations Immunities Act, 22 U.S.C. § 288 et seq. *See* Exec. Order 12467 § 1 (Mar. 2, 1984). That designation applies to actions undertaken by the U.S. Section of the Commission in respect of Commission matters that are not within the U.S. Section's "exclusive control, supervision or jurisdiction, or within the sole discretion of the United States Commissioner." *Id.* § 2. The joint binational surveys conducted on July 27-28, 2023, and August 30, 2023, were not matters within the U.S. Section's exclusive control, supervision, or jurisdiction, nor were they within the sole discretion of the U.S. Commissioner. ECF 32-1 ¶¶ 2, 9; Pena Sept. 18 Decl. ¶¶ 2, 10.

Respectfully submitted,

Dated: September 19, 2023

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CERTIFICATE OF SERVICE

I certify that on September 19, 2023, a copy of this filing was served on counsel of record through the Court's electronic filing system.

/s/ Andrew Knudsen
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